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BEFORE THE ARIZONA CORPORATION COMMISSION  
**DOCKETED**

SEP 17 1999

CARL J. KUNASEK  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
WILLIAM A. MUNDELL  
COMMISSIONER

DOCKETED BY

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IN THE MATTER OF THE APPLICATION OF  
NEW WEST ENERGY CORPORATION FOR A  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE COMPETITIVE  
RETAIL ELECTRIC SERVICES AS AN  
ELECTRIC SERVICE PROVIDER PURSUANT TO  
A.A.C. R14-2-1601 *ET SEQ.*

DOCKET NO. E-03685A-99-0008

DECISION NO. 61944

**OPINION AND ORDER**

DATE OF HEARING: July 15, 1999

PLACE OF HEARING: Phoenix, Arizona

PRESIDING OFFICER: Teena Wolfe

APPEARANCES:

Mr. Kenneth Sundlof, JENNINGS, STROUSS & SALMON, PLC on behalf of Applicant New West Energy Corporation;

Mr. Jeffrey B. Guldner, SNELL & WILMER, LLP, on behalf of Arizona Public Service Company;

Mr. Todd Wiley, GALLAGHER & KENNEDY, on behalf of Arizona Electric Power Cooperative, Graham County Electric Cooperative, and Duncan Valley Electric Cooperative;

Mr. Randall H. Warner, ROSHKA, HEYMAN & DEWULF, PLC, on behalf of Intervenor NEV Southwest, LLC,;

Mr. Douglas C. Nelson, DOUGLAS C. NELSON, PC, on behalf of Intervenor Commonwealth Energy Corporation;

Mr. Walter W. Meek, President, for Intervenor Arizona Utility Investors Association;

Mr. Thomas L. Mumaw, SNELL & WILMER, LLP, on behalf of Intervenor APS Energy Services Company, Inc.;

Mr. Stephen Gibelli, Staff Counsel, on behalf of Intervenor Residential Utility Consumer Office; and

Mr. Peter A. Breen, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

**BY THE COMMISSION:**

On January 13, 1999, New West Energy Corporation ("NWE" or "Applicant") filed with the Arizona Corporation Commission ("Commission") an application for a Certificate Of Convenience and Necessity to provide retail electric services as an Electric Service Provider pursuant to A.A.C. R14-2-1601 *et seq.* ("Application"). In its Application, NWE proposed to provide competitive retail electric service as a Load-Serving Entity and as an Aggregator in all areas of the State of Arizona which the Commission has designated as open to retail electric competition.

On May 21, 1999, the Commission's Utilities Division Staff ("Staff") filed its Staff Report in this matter, in which it recommended approval of the Application following a hearing.

By Procedural Order dated May 25, 1999, all the Affected Utilities as defined by the Retail Electric Competition Rules<sup>1</sup> were joined as parties in this matter with the opportunity to respond to NWE's Application, and were given notice that if the Application is granted, the Certificates of Convenience and Necessity ("Certificates" or "CC&Ns") of the Affected Utilities will be rescinded, altered, or amended pursuant to A.R.S. §40-252. Those parties so joined and noticed include Tucson Electric Power Company, Arizona Public Service Company, Citizens Utilities Company, Arizona Electric Power Cooperative, Trico Electric Cooperative, Duncan Valley Electric Cooperative, Graham County Electric Cooperative, Mohave Electric Cooperative, Sulphur Springs Valley Electric Cooperative, Navopache Electric Cooperative, Ajo Improvement Company, and Morenci Water and Electric Company, and are referred to collectively herein as "Affected Utilities."

Other parties who requested and were granted intervention in this matter include NEV Southwest, L.L.C. ("NEV"), the Residential Utility Consumer Office ("RUCO"), Cyprus Climax Metals Company ("Cyprus"), ASARCO Incorporated ("ASARCO"), Enron Corp. ("Enron"),

<sup>1</sup> A.A.C. R14-2-1601 *et seq.*, which were stayed on the date the May 25, 1999 Procedural Order was issued. Decision No 61311 (January 11, 1999) stayed the effectiveness of the Retail Electric Competition Rules. Pursuant to Decision 61311 (April 23, 1999), Staff has forwarded new Proposed Retail Electric Competition Rules ("Proposed Rules") to the Office of the Secretary of State for Notice of Proposed Rulemaking. Sections 1601 of both the stayed Rules and the Proposed Rules define the same entities as "Affected Utilities."

1 Commonwealth Energy Corporation ("Commonwealth"), Arizona Utility Investors Association  
2 ("AUIA"), and APS Energy Services Company, Inc. ("APSES").

3 NWE filed amendments to its Application on April 2, 1999 and June 15, 1999.

4 This matter came before a duly authorized Hearing Officer of the Commission at the  
5 Commission's offices in Phoenix, Arizona on July 15, 1999. Applicant, Intervenors, and Staff  
6 appeared. No member of the public appeared to make public comment. Evidence was presented and,  
7 after a full public hearing, this matter was adjourned pending submission of a Recommended Opinion  
8 and Order to the Commission.

9 NWE, APSES, APS, Commonwealth, NEV, and Staff filed closing memoranda on July 30,  
10 1999.

11 Commonwealth proposed that the Commission impose the following conditions on approval of  
12 NWE's CC&N:

- 13 1. SRP must submit a recent cost of service study to the Commission for review and hearing, so  
as to determine SRP compliance under MOA Section 7 and Addendum Section 7.
- 14 2. SRP must grant its customers a "generation shopping credit" equivalent to the full cost of  
15 generation incurred by that customer under the SRP Standard Offer tariff, so as to assure the  
public that "full and unfettered" competition will occur in the SRP distribution service  
territory under the MOA, the Proposed Electric Competition Rules, and HB 2663.
- 16 3. NWE's certificate shall be revoked automatically, without further action of the Commission,  
17 if SRP does not provide adequate proof to the Commission that at least 20 percent of its 1995  
retail load, with at least 15 percent thereof shall be residential customers, is receiving  
18 competitive electric generation as of December 31, 1999. Since SRP was required to meet  
this minimum level over six months ago, it is consistent with Arizona law.

19 NEV recommended that NWE be required to submit a code of conduct for Commission approval  
20 and comply with the Commission's Affiliate Transactions Rules; NWE should be required to  
21 cooperate with any Commission investigation of complaints regarding cross-subsidization; and  
22 NWE's Certificate should be conditioned upon the opening of SRP's service area to viable  
23 competition.

24 APS echoed NEV's recommendation that the Commission should expressly confirm its  
25 authority to investigate complaints of cross-subsidization involving affiliates of NWE, and also  
26 recommended that the Commission should affirm in its Order that NWE is a public service  
27 corporation and is not exempt from rules applicable to other public service corporations. APS further  
28

1 recommended that the Commission should take steps to prevent NWE from invoking a limitati-  
2 statute that should protect only sovereign, not proprietary, actions.<sup>2</sup>

3 APSES argued that since the Commission has determined that the status of retail electric  
4 competition in the distribution service areas of an ESP's affiliated utility distribution company is  
5 relevant to whether the ESP is allowed to provide competitive electric services, the Commission  
6 should "similarly require some assurance that there are meaningful opportunities for electric  
7 competition in the service area of New West's 'parent', SRP". APSES proposed that NWE be  
8 required to submit a code of conduct for the Commission's approval.

9 Staff recommended that NWE's Certificate should not be conditioned upon a determination  
10 that SRP's territory is open to competition. Staff believes that all of the legal prerequisites for  
11 competition in SRP's service territory are in place – the Legislature has explicitly required SRP to  
12 allow competition; SRP has already dealt with its own stranded cost issues; SRP has established  
13 unbundled rates; and SRP has entered into a contract with APSES. Staff agrees that NWE should be  
14 bound by symmetrical code of conduct requirements, and since SRP is non-jurisdictional, N  
15 should be required to submit a code of conduct for Commission approval.

16 NWE believes that its application should be treated as any other subsidiary of a non-  
17 jurisdictional utility (e.g. PG&E ES, Illonova ES). At the hearing, NWE explained that it seeks  
18 statewide authority in the same manner as other ESPs, but that it intends to provide service outside  
19 the SRP service territory. NWE agreed that in the event it were to serve within SRP's area, its  
20 activities would be subject to the jurisdiction of the Commission, just as would the activities of any  
21 other ESP serving in SRP's service territory. NWE opposed what it believed were recommendations  
22 to impose regulation on SRP through NWE. Under the Electric Competition Act, SRP conducted a  
23 public process and adopted a code of conduct, which NWE has agreed to comply with, as though it  
24 were a part of the competitive side of SRP.

25 We agree that a code of conduct is necessary. Generally, in addition to preventing cross-  
26 subsidization that would affect the ratepayers of the affiliated UDC, a code of conduct also insures

27  
28 <sup>2</sup> In its Post Hearing Memorandum, NWE agreed that it (NWE) is not within the scope of the statute, A.R.S. Section 12-820.01.

1 that the affiliated ESP is not given a competitive advantage as against other ESPs. Further, we agree  
 2 that the same language we approved for other applicants not affiliated with a public utility subject to  
 3 our jurisdiction, concerning cooperation with any investigation of customer or competitor complaints,  
 4 is also appropriate here. We agree with Staff that it is unnecessary to make any further determination  
 5 concerning the status of competition in SRP's territory.

6 \* \* \* \* \*

7 Having considered the entire record herein and being fully advised in the premises, the  
 8 Commission finds, concludes, and orders that:

9 **FINDINGS OF FACT**

10 1. On January 13, 1999, NWE filed the Application with the Commission. In its  
 11 Application, NWE proposed to provide competitive retail electric service as a Load-Serving Entity  
 12 and as an Aggregator in all areas of the State of Arizona which the Commission has designated as  
 13 open to retail electric competition.

14 2. NWE was established on May 1, 1997 by Salt River Project Agricultural Improvement  
 15 and Power District ("SRP") as a wholly owned taxable subsidiary to market, at retail, energy that  
 16 may be rendered surplus by the introduction of retail competition in Arizona.

17 3. On May 21, 1999, Staff filed its Staff Report in this matter, recommending that NWE  
 18 be granted a CC&N as an ESP with authority to provide competitive retail electric service as a Load-  
 19 Serving Entity and as an Aggregator.

20 4. By Procedural Order dated May 25, 1999, the Affected Utilities were joined as parties  
 21 in this matter with the opportunity to respond to the Application, and were given notice that if the  
 22 Application is granted, the CC&Ns of the Affected Utilities will be rescinded, altered, or amended  
 23 pursuant to A.R.S. §40-252.

24 5. On April 2, 1999 and June 15, 1999 NWE filed amendments to the Application  
 25 making changes to its residential and non-residential tariffs included in the Application.

26 6. Other parties who requested and were granted intervention in this matter include NEV,  
 27 RUCO, Cyprus, ASARCO, Enron, Commonwealth, AUIA and APSES.

28 7. NWE caused notice of the hearing in this matter to be published in the Arizona

1 Republic on June 13, 1999.

2 8. On July 15, 1999, a public hearing was held as scheduled, at which Ms. Nancy Loefer  
3 for Applicant and Mr. Kevin Mosier for Staff presented evidence.

4 9. The Application proposed a maximum tariff rate of \$25 per kilowatt hour for electric  
5 energy and aggregation provided pursuant to contract between NWE and residential and  
6 nonresidential customers.

7 10. NWE does not seek certification at this time as a Meter Service Provider or Meter  
8 Reading Service Provider, but requests Commission authorization to resell those services to its  
9 customers.

10 11. Staff stated in its Staff Report and at the hearing that NWE's tariff is acceptable and  
11 presented in a format consistent with competitive tariffs previously approved by the Commission.

12 12. NWE stated at the hearing that it did not intend to provide services within the service  
13 territory of SRP.

14 13. In its Staff Report, Staff recommended that the Application be approved subject to  
15 following conditions:

- 16 (a) NWE shall have a Service Acquisition Agreement with the Utility Distribution  
17 Company in each service area to be served that has been approved by the  
18 Director, Utilities Division prior to the provision of service in a UDC service  
19 territory;
- 20 (b) NWE shall either be approved by the Arizona Independent System  
21 Administrator as its own Scheduling Coordinator, or have a service agreement  
22 with an Arizona Independent System Administrator-approved Scheduling  
23 Coordinator;
- 24 (c) NWE shall acquire a financial guarantee bond in the initial amount of  
25 \$100,000 to be adjusted in the future on the basis of sales volume and any  
26 amounts that NWE collects by way of deposits or advance payments;
- 27 (d) In lieu of any additional bond or guarantee to protect against any possible  
28 default or non-performance, NWE shall, prior to certification, provide the  
Commission with proof that it has been found creditworthy by the credit terms  
of the UDC(s);
- (e) NWE shall, prior to provision of Competitive Services, file documents to  
approved by the Director, Utilities Division, that clarify the extent of the

financial commitment NWE has received from its parent company;

(f) NWE shall provide Meter Service and Meter Reading Services to its retail customers only under a resale service agreement with Commission-certificated Meter Service Providers and Meter Reading Service Providers; and

(g) Prior to providing any billing and collection service in service areas regulated by the Commission, NWE shall file a tariff setting forth a maximum price for billing and collection service for written approval by the Director, Utilities Division.

14. APS proposed that the Order granting NWE's CC&N find that NWE is a public service corporation subject to the jurisdiction of the Commission, and that the Order contain the following conditions, which are similar to those included in the Order granting PG&E Energy Services Corporation a Certificate of Convenience and Necessity to Supply Competitive Services as an Electric Service Provider (Docket No. E-0359A-98-0389):

(a) NWE shall cooperate with any Commission investigation of customer or competitor complaints, including, but not limited to complaints regarding cross-subsidization from Salt River Project; and

(b) Failure of NWE to comply with any Commission investigation may result in rescission of NWE's CC&N pursuant to A.A.C. R14-2-1603(I).

15. NEV, APSES, and Staff proposed that NWE file a code of conduct for Commission approval.

16. Commonwealth made recommendations that the Commission require SRP to submit a cost of service study for review and hearing; implement generation shopping credits; and require "adequate proof" of the level of competition in its service territory.

17. NWE has acquired experienced technical and operational personnel from SRP.

18. NWE has been a registered provider of competitive electric retail service in California since July 28, 1997, and has met the technical and operational certification and testing requirements necessary to provide electricity to customers of Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas and Electric Company.

19. SRP, NWE's parent company, had net revenues for the years ending April 30, 1997 and 1998 of \$57.2 million and \$64.5 million respectively. SRP has capitalized NWE with \$15 million in equity and \$20 million in working capital loans, and has agreed to provide financial

1 guarantees to an aggregate of \$70 million.

2 20. APS requested that the Order granting NWE's CC&N contain a finding on ...  
3 applicability or non-applicability of A.R.S. § 12-801(01) to SRP's financial guarantee of NWE, and  
4 that if A.R.S. § 12-801(01) does apply, that the Order direct NWE to seek a waiver thereof.

5 21. NWE possesses the requisite technical and financial capability developed from its  
6 operational experience in California and its association with its parent company SRP to provide  
7 competitive ESP services as a Load-Serving Entity and as an Aggregator within the State of Arizona.

8 22. NWE intends to contract with SRP, which is certified to operate as a Scheduling  
9 Coordinator by the California Independent System Operator, to serve as its Scheduling Coordinator  
10 in Arizona.

### 11 CONCLUSIONS OF LAW

12 1. NWE is a public service corporation within the meaning of Article XV of the Arizona  
13 Constitution.

14 2. The Commission has jurisdiction over NWE and the subject matter of the Applicati

15 3. Notice of the hearing was given in accordance with law.

16 4. The Arizona Legislature's enactment of House Bill 2663 and the Commission's  
17 issuance of Decision Nos. 59943, 60977, 61017, and 61634 have made it clear that competition in the  
18 provision of retail electric services is the public policy of Arizona.

19 5. NWE should receive a CC&N as an ESP authorized to provide services as a Load-  
20 Serving Entity and as an Aggregator.

21 6. NWE's CC&N should be subject to the conditions recommended by Staff in Findings  
22 of Fact No. 13 above.

23 7. NWE should file its code of conduct for Commission approval, no later than 30 days  
24 from the date of this Decision.

25 8. Prior to provision of any other competitive service not approved at this time, NWE  
26 should apply to the Commission for approval.

27 9. Prior to provision of any competitive service, NWE should acquire all relevant  
28 licenses from lawful taxing authorities within the State of Arizona.



10. Rates and terms and conditions of service adopted herein are fair, reasonable and consistent with the Proposed Rules and with the underlying policies of the Arizona Constitution.

11. The Affected Utilities received notice of the possibility of rescission, alteration or amendment of their existing CC&Ns should NWE receive a CC&N to supply competitive services as an Electric Service Provider within the service territories of the Affected Utilities.

12. The Affected Utilities had an opportunity to be heard on the possibility of rescission, alteration or amendment of their existing CC&Ns.

13. Issuance of a CC&N requires the Certificate holder to make an adequate investment and to render competent and adequate service.

14. There was no evidence presented in this proceeding indicating that any of the Affected Utilities had failed to render adequate service or had charged unreasonable rates.

15. NWE should file documents to be approved by the Director, Utilities Division, that clarify the extent of the financial commitment NWE has received from SRP.

16. Granting NWE's Application for a CC&N to supply Competitive Services as an ESP within the service territories of the Affected Utilities is in the public interest, because it will provide a reasonable opportunity for the potential benefits of competition to develop in the State of Arizona.

17. It is not in the public interest to rescind, alter or amend the CC&N of any Affected Utility prior to final resolution of the Stranded Cost issues for that Affected Utility; therefore NWE should not be authorized to provide competitive service in the certificated area of an Affected Utility until the Commission has reached a final resolution in that Affected Utility's respective Stranded Cost filing.

## ORDER

IT IS THEREFORE ORDERED that the application of New West Energy Corporation for an Electric Service Provider Certificate of Convenience and Necessity is hereby granted, and that New West Energy Corporation is thereby authorized to supply competitive retail electric services as a Load-Serving Entity and as an Aggregator in all areas of the State of Arizona which are opened to retail electric competition.

IT IS FURTHER ORDERED that prior to providing service within the service area of any

1 Utility Distribution Company, New West Energy Corporation shall have a Service Acquisition  
2 Agreement with that Utility Distribution Company approved by the Director, Utilities Division.

3 IT IS FURTHER ORDERED that prior to provision of any Competitive Service, New West  
4 Energy Corporation shall acquire all relevant tax licenses from lawful taxing authorities within the  
5 State of Arizona.

6 IT IS FURTHER ORDERED that prior to providing service, New West Energy Corporation  
7 shall either have a service agreement with a Scheduling Coordinator certified by the Arizona  
8 Independent System Administrator or become certified by the Arizona Independent System  
9 Administrator as its own Scheduling Coordinator.

10 IT IS FURTHER ORDERED that the financial guarantee bond in the initial amount of  
11 \$100,000 New West Energy Corporation has obtained shall be adjusted in the future on the basis of  
12 sales volume and any amounts that New West Energy Corporation collects by way of deposits or  
13 advance payments.

14 IT IS FURTHER ORDERED that within thirty days of the date of this Decision, New West  
15 Energy Corporation shall file documents to be approved by the Director, Utilities Division, that  
16 clarify the extent of the financial commitment New West Energy Corporation has received from its  
17 parent company.

18 IT IS FURTHER ORDERED that within thirty days of the date of this Decision, New West  
19 Energy Corporation shall file its code of conduct for Commission approval.

20 IT IS FURTHER ORDERED that New West Energy Corporation is hereby authorized to  
21 resell Meter Services and Meter Reading Services to its customers.

22 IT IS FURTHER ORDERED that New West Energy Corporation shall cooperate with any  
23 Commission investigation of customer or competitor complaints, including, but not limited to,  
24 complaints regarding cross-subsidization from Salt River Project.

25 IT IS FURTHER ORDERED that failure of New West Energy Corporation to comply with  
26 any Commission investigation may result in rescission of New West Energy Corporation's Certificate  
27 of Convenience and Necessity.

28 IT IS FURTHER ORDERED that prior to the provision of any other Competitive Service not

approved at this time, New West Energy Corporation shall apply to the Commission for approval.

IT IS FURTHER ORDERED that New West Energy Corporation shall not be authorized to provide Competitive Services in any certificated area of any Affected Utility until the Certificate of Convenience and Necessity of the respective Affected Utility has been amended.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.



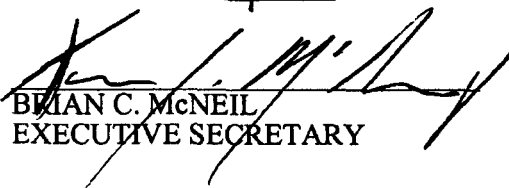
CHAIRMAN



COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 1<sup>7<sup>th</sup></sup> day of ~~September~~, 1999.

  
BRIAN C. McNEIL  
EXECUTIVE SECRETARY

DISSENT \_\_\_\_\_

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